



# Senate

General Assembly

**File No. 105**

February Session, 2006

Senate Bill No. 493

*Senate, March 23, 2006*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING SUBCONTRACTOR CLAIMS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-42 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any person who performed work or supplied materials for  
4 which a requisition was submitted to, or for which an estimate was  
5 prepared by, the awarding authority and who does not receive full  
6 payment for such work or materials within sixty days of the applicable  
7 payment date provided for in subsection (a) of section 49-41a, or any  
8 person who supplied materials or performed subcontracting work not  
9 included on a requisition or estimate who has not received full  
10 payment for such materials or work within sixty days after the date  
11 such materials were supplied or such work was performed, may  
12 enforce such person's right to payment under the bond by serving a  
13 notice of claim on the surety that issued the bond and a copy of such  
14 notice to the contractor named as principal in the bond [within] not  
15 later than one hundred eighty days [of the applicable payment date

16 provided for in subsection (a) of section 49-41a, or, in the case of a  
17 person supplying materials or performing subcontracting work not  
18 included on a requisition or estimate, within one hundred eighty days]  
19 after the last date any such materials were supplied or any such work  
20 was performed. In the event such claim is for payment of retainage, as  
21 defined in section 42-158i, such notice shall be served not later than  
22 one hundred eighty days after the applicable payment date provided  
23 for in subsection (a) of section 49-41a. The notice of claim shall state  
24 with substantial accuracy the amount claimed and the name of the  
25 party for whom the work was performed or to whom the materials  
26 were supplied, and shall provide a detailed description of the bonded  
27 project for which the work or materials were provided. If the content  
28 of a notice prepared in accordance with subsection (b) of section 49-41a  
29 complies with the requirements of this section, a copy of such notice,  
30 served [within] not later than one hundred eighty days [of] after the  
31 [payment] date provided for in [subsection (a) of section 49-41a] this  
32 section upon the surety that issued the bond and upon the contractor  
33 named as principal in the bond, shall satisfy the notice requirements of  
34 this section. [Within] Not later than ninety days after service of the  
35 notice of claim, the surety shall make payment under the bond and  
36 satisfy the claim, or any portion of the claim which is not subject to a  
37 good faith dispute, and shall serve a notice on the claimant denying  
38 liability for any unpaid portion of the claim. Failure of the surety to  
39 either pay or identify the portion of the claim that is subject to a good  
40 faith dispute within such ninety-day period shall operate as a waiver  
41 of such surety's defenses to the entire claim. The notices required  
42 under this section shall be served by registered or certified mail,  
43 postage prepaid in envelopes addressed to any office at which the  
44 surety, principal or claimant conducts business, or in any manner in  
45 which civil process may be served. If the surety denies liability on the  
46 claim, or any portion thereof, the claimant may bring action upon the  
47 payment bond in the Superior Court for such sums and prosecute the  
48 action to final execution and judgment. An action to recover on a  
49 payment bond under this section shall be privileged with respect to  
50 assignment for trial. The court shall not consolidate for trial any action

51 brought under this section with any other action brought on the same  
52 bond unless the court finds that a substantial portion of the evidence to  
53 be adduced, other than the fact that the claims sought to be  
54 consolidated arise under the same general contract, is common to such  
55 actions and that consolidation will not result in excessive delays to any  
56 claimant whose action was instituted at a time significantly prior to the  
57 motion to consolidate. In any such proceeding, the court judgment  
58 shall award the prevailing party the costs for bringing such proceeding  
59 and allow interest at the rate of interest specified in the labor or  
60 materials contract under which the claim arises or, if no such interest  
61 rate is specified, at the rate of interest as provided in section 37-3a  
62 upon the amount recovered, computed from the date of service of the  
63 notice of claim, provided, for any portion of the claim which the court  
64 finds was due and payable after the date of service of the notice of  
65 claim, such interest shall be computed from the date such portion  
66 became due and payable. The court judgment may award reasonable  
67 attorneys fees to either party if upon reviewing the entire record, it  
68 appears that either the original claim, the surety's denial of liability, or  
69 the defense interposed to the claim is without substantial basis in fact  
70 or law or is in contravention of payment obligations required by law.  
71 Any person having direct contractual relationship with a subcontractor  
72 but no contractual relationship express or implied with the contractor  
73 furnishing the payment bond shall have a right of action upon the  
74 payment bond upon giving written notice of claim as provided in this  
75 section.

76 (b) Every suit instituted under this section shall be brought in the  
77 name of the person suing, in the superior court for the judicial district  
78 where the contract was to be performed, irrespective of the amount in  
79 controversy in the suit, but no such suit may be commenced after the  
80 expiration of one year after the [applicable payment date provided for  
81 in subsection (a) of section 49-41a, or, in the case of a person supplying  
82 materials or performing subcontracting work not included on a  
83 requisition or estimate, no such suit may be commenced after the  
84 expiration of one year after the] last date that any such materials were  
85 supplied or any such work was performed, except that any such suit

86 seeking payment, in whole or in part, for retainage, as defined in  
 87 section 42-158i, shall be commenced not later than one year after the  
 88 date payment of such retainage was due, pursuant to the provisions of  
 89 subsection (a) of section 49-41a.

90 (c) The word "material" as used in sections 49-33 to 49-43, inclusive,  
 91 shall include construction equipment and machinery that is rented or  
 92 leased for use (1) in the prosecution of work provided for in the  
 93 contract within the meaning of sections 49-33 to 49-43, inclusive, or (2)  
 94 in the construction, raising or removal of any building or improvement  
 95 of any lot or in the site development or subdivision of any plot of land  
 96 within the meaning of sections 49-33 to 49-39, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-42

**GL**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill makes various changes to laws concerning subcontractor claims and has no fiscal impact.

***The Out Years***

There is no fiscal impact in the out years.

**OLR Bill Analysis****SB 493*****AN ACT CONCERNING SUBCONTRACTOR CLAIMS.*****SUMMARY:**

This bill revises a subcontractor's or supplier's deadline for filing payment claims against a general contractor's surety company and for suing a surety company to compel payment. It creates a consequence if a surety company fails to meet its deadline for acting on claims. Finally, the bill adds a ground on which a court in these cases may award reasonable attorney's fees.

EFFECTIVE DATE: Upon passage

**DEADLINES FOR FILING CLAIMS AGAINST A SURETY COMPANY**

The law requires public works contracts valued at more than \$50,000 to require the general contractor to (1) pay the amount due subcontractors or suppliers within 30 days after being paid by the state or municipality ("the payment due date") if the work performed or material supplied was included in a requisition or estimate and (2) include in its subcontracts a requirement that a subcontractor pay its subcontractors within 30 days after being paid by the general contractor. Public works contracts valued at \$50,000 or more must require the contractor to furnish a payment bond from a surety company. A general contractor or subcontractor who has not been fully paid after 60 days has the right to file a payment claim with the surety company.

Under current law, the deadline for filing these claims is 180 days after the requisition for work or materials was submitted or, if the work or materials were not included in a requisition or estimate, 180 days after the work was performed or the materials supplied. The bill

instead makes the deadline for filing claims, other than for retainage, 180 days after the last date on which work was supplied or materials provided. For retainage, the bill sets 180 days after the payment due date as the deadline.

“Retainage” is the amount withheld from progress payments conditioned on substantial or final completion of all work in accordance with a construction contract, but it does not include amounts withheld for failure to comply with construction plans or specifications.

### **DEADLINE FOR A SURETY TO ACT ON A CLAIM**

The law gives a surety 90 days to (1) pay a claim or that portion that is not the subject of a good faith dispute and (2) give notice to the claimant denying liability for an unpaid portion of a claim. The bill provides that a surety company’s failure to pay or identify the part of the claim that is subject to a good faith dispute within the 90-day period waives its defenses to the entire claim.

### **DEADLINE FOR FILING SUIT TO ENFORCE A CLAIM**

The bill changes the deadline for filing a suit to enforce a claim in the same way that it changes the deadline for making a claim against the surety. The law requires a suit to be filed within one year after the requisition was submitted or, if the work or materials were not included in a requisition, within one year after the work was performed or the material was supplied. The bill instead makes the deadlines one year after the last date that work was supplied or materials provided or, if the suit is being filed for payment of retainage, one year after the payment due date.

### **GROUND FOR AWARDING REASONABLE ATTORNEY’S FEES**

The law allows a court to award reasonable attorney’s fees to either party if it appears that the original claim, the surety’s denial of liability, or the defense against the claim is without substantial basis in fact or law. The bill also allows reasonable attorney’s fees if the defense against a claim violates the law establishing the right to enforce

payment on a bond.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable

Yea 15    Nay 0    (03/09/2006)